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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 DAVID M. CURLEY, SR.,

13 Plaintiff,

14 v.

15 WELLS FARGO & CO., and others,

16 Defendants.
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Case No. 13-cv-03805 NC

**ORDER REQUIRING FURTHER
BRIEFING**

Re: Dkt. No. 4

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19 In their pending motion to dismiss, Defendants argue that Plaintiff Curley's TPP is
20 not an enforceable contract, and that "[n]either law nor equity provides a remedy" for such
21 an agreement. Dkt. No. 4 at 19. At oral argument, held October 9, 2013, counsel for
22 Defendants confirmed that a TPP does not create a contractual right to a loan modification.
23 The Court has become aware of a recent Ninth Circuit decision that neither party cited in its
24 papers, which addresses "whether a bank was contractually required to offer the plaintiffs a
25 permanent mortgage modification after they complied with the requirements of a trial
26 period plan." *Corvello v. Wells Fargo Bank, NA*, 11-16234, 2013 WL 4017279 (9th
27 Cir. Aug. 8, 2013), *as amended on reh'g in part* (Sept. 23, 2013).

28 The Court reminds Defendants of their duty of candor with the Court, as well

1 as Rule 11, which notes that by submitting a brief to the Court, the parties certify that
2 “the claims, defenses, and other legal contentions are warranted by existing law.”
3 Fed. R. Civ. P. 11.

4 The parties are ORDERED to submit further briefing addressing how the
5 Ninth Circuit’s decision in *Corvello* impacts the Court’s analysis of the motion to
6 dismiss. Defendants must submit a brief, not to exceed five pages, addressing this
7 issue within seven days. Plaintiff must submit his opposition, not to exceed five
8 pages, within seven days of Defendants’ filing of their brief. The Court will not
9 require a reply brief.

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12 IT IS SO ORDERED.

13 Date: October 11, 2013

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15 Nathanael M. Cousins
16 United States Magistrate Judge
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